

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

75-1368

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To be argued by
MICHAEL YOUNG

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

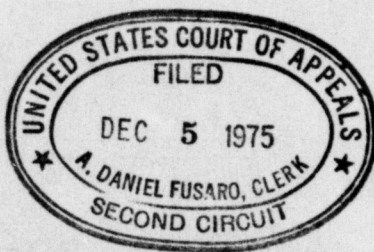
EDWARD MAULDIN,

Appellant.

Docket No. 75-1348

BRIEF FOR APPELLANT
PURSUANT TO
ANDERS v. CALIFORNIA

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



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QUESTION PRESENTED

Whether there are any non-frivolous issues to be raised
for this Court's review.

STATEMENT PURSUANT TO RULE 28(a)(3)

Preliminary Statement

This appeal is from a judgment of the United States District Court for the Southern District of New York (The Honorable Whitman Knapp) entered on October 7, 1975, convicting appellant Mauldin of bank robbery, bank robbery by intimidation, and putting someone's life in jeopardy during a bank robbery, in violation of 18 U.S.C. §2113(a), (b) and (d). Appellant was committed to custody as a Youthful Offender pursuant to 18 U.S.C. §5010(b).

The Legal Aid Society was continued as counsel on appeal, pursuant to the Criminal Justice Act.

Statement of Facts

Appellant was indicted for bank robbery (count 2), bank robbery by intimidation (count 1), and putting someone's life in jeopardy during a bank robbery (count 3).^{*} The charges arose from the theft of money on April 3, 1975, from a branch of the First National City Bank on Duane Street, New York.

The Government's case consisted of the testimony of bank employees and two New York City police officers who were in the bank at the time of the robbery. Francis

* The indictment is included in appellant's separate appendix as "B".

Soto, a teller at the bank, testified that on April 3, 1975, at approximately 11:10 a.m., while she was working at the bank, a man approached her window, dropped a bag in front of her, and directed her to put all of her money into the bag (18-19).^{*} The man added that he was not kidding, and pointed a gun (19). Ms. Soto then activated the alarm, and gave the man the "bait money" in her drawer (19). He grabbed the bag from her, jumped over a rope barrier behind him, and ran out of the bank (19).

Ms. Soto then observed a policeman, who was standing behind the robber in her line, drop his umbrella and run after the robber out the door of the bank (19-20). A few minutes later, the policeman returned to the bank with the robber (20).

Ms. Soto testified that she was nervous and upset during the robbery, and did not clearly observe the robber. She could describe him only as tall, thin and dark (19). When the policeman and the man he had apprehended returned to the bank, she observed that the man wore glasses, a "sailor's pea hat, and a dark coat" (23-4). She was unable to identify the defendant as the man who had robbed her (20). She did identify for the jury certain photographs taken by bank surveillance cameras of the robber, herself, and the police officer (21-3).

^{*} Numerals in parenthesis refer to pages of the trial transcript.

Raymond Kranglewitz, a New York City police officer, testified that at the time of the robbery, he was standing behind the robber in the teller's line, waiting to make a loan payment (36). When he observed the robber, bag in hand, leap over the rope barrier and run for the door, he yelled to the robber to stop, and then dropped his umbrella, drew his revolver, and pursued him out of the door of the bank (37). Outside the bank, he chased the man east on Duane Street, shouting "police officer, stop." He observed the man drop the bag containing the money, run 10 to 15 more feet, drop the gun, run a few more feet, and then stop, raise his hands and say "I give up" (37). Kranglewitz then apprehended the man, handcuffed him, and returned with him to the bank where he was searched (38-9). Surgical gloves discovered in his pocket during this search were introduced into evidence over the objection of defense counsel that they were irrelevant to the issues at trial (39-40). Kranglewitz identified appellant Mauldin as the man he pursued out of the bank and apprehended (41-2).

George Taylor, another New York City police officer present in the bank at the time of the robbery, testified that he observed a male black pursued by a male white exit the bank, that he followed them, and assisted Officer Kranglewitz, the male white, in apprehending and handcuffing appellant Mauldin outside the bank (52-3).

Joseph Mihalich and Raymond Grodzki, also employees of the bank, testified to various details of the robbery (59-74).

After the Government rested, the Court denied appellant's motion for a directed verdict of acquittal (74).

The defense introduced a stipulation that appellant Mauldin was six feet three inches tall (87), and then rested (87). After the summations and Court's charge, the jury returned a verdict of guilty on all three counts. After a Court ordered study of appellant pursuant to 18 U.S.C. §5010(e), appellant was sentenced as a youthful offender under 18 U.S.C. §5010(b).

STATEMENT OF POSSIBLE LEGAL ISSUES

1. The introduction into evidence of the surgical gloves.

The only objection by defense counsel which was overruled by the district court was to the Government's introduction into evidence of the surgical gloves found in appellant's pocket during the search following his arrest. The basis of the defense objection was that the gloves were irrelevant to the issues on trial since there was no evidence that the individual who robbed the bank had worn such gloves. The Government's theory was that the jury could infer from appellant's possession of these gloves that he had anticipated engaging in some endeavor in which he might wish to wear the gloves to prevent leaving fingerprints. The Court admitted the gloves into evidence, stating that counsel could argue their relevance to the jury in summation.

In view of the discretion of the district court to admit evidence which may be probative of guilt, the inference of guilt which the Government suggested the jury could infer from appellant's possession of the gloves, and defense counsel's failure to claim that the gloves would be inflammatory or prejudicial to the defendant, this admission was not reversible error. United States v. LaFroscia, 485 F.2d 457 (2d Cir. 1973).

2. The trial court's denial of appellant's motions for a directed verdict of acquittal and a judgment notwithstanding the verdict.

If the jury chose to credit the testimony of bank teller Soto as to the armed robbery, and the identification of appellant Mauldin by police officers Kranglewitz and Taylor as the man they pursued out of the bank and apprehended, they could infer all of the elements necessary to find appellant guilty of bank robbery, bank robbery by intimidation, and putting someone's life in jeopardy during a bank robbery. Consequently, the denial of the motions for a directed verdict of acquittal and a judgment notwithstanding the verdict was proper. Rule 29, Federal Rules of Criminal Procedure; United States v. Houlihan, 332 F.2d 8 (2d Cir.), cert. denied, 379 U.S. 828 (1964).

CONCLUSION

For the foregoing reasons, there are no non-frivolous issues in this case which might be raised for this Court's review. Accordingly, an order should be entered relieving The Legal Aid Society, Federal Defender Services Unit, as counsel for Mr. Mauldin on this appeal.

Respectfully submitted,

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December 5, 1975